

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**IN RE THE APPLICATION OF
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS TO UNSEAL
CRIMINAL PROSECUTION OF JULIAN
ASSANGE**

Misc. Action No. _____

**APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS TO UNSEAL CRIMINAL PROSECUTION OF JULIAN ASSANGE**

1. The Reporters Committee for Freedom of the Press (the “Reporters Committee” or “Applicant”) respectfully moves this Court for an Order unsealing court records—including the docket and any criminal complaint, indictment, or other charging document—from the United States government’s sealed criminal prosecution of WikiLeaks founder Julian Assange (“Assange”) (hereinafter, the “Assange Prosecution”).

INTEREST OF THE APPLICANT

2. The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee has participated as a party and as *amicus curiae* in First Amendment and freedom of information litigation since 1970. The Reporters Committee frequently represents the interests of the press and the public in matters implicating the public’s First Amendment and common law rights of access to judicial proceedings and court records.

3. The Reporters Committee, like all members of the public and the press, has a strong interest in access to criminal matters pending in federal district courts. Both the press and the public have a particularly powerful interest in access to sealed court records related to the government’s prosecution of Assange, the founder of WikiLeaks.

BACKGROUND FACTS

4. Assange is an Australian computer programmer and the founder of WikiLeaks, which describes itself as a “multi-national media organization and associated library.” WikiLeaks.org, <https://wikileaks.org/What-is-WikiLeaks.html>. On information and belief, Assange founded WikiLeaks in or about 2006. Since 2012, Assange has lived in the Ecuadoran Embassy in London.

5. In or about July of 2018, Special Counsel Robert Mueller’s office indicted 12 Russian military intelligence officers and charged them in connection with an alleged conspiracy to hack computer systems at the Democratic National Committee (“DNC”) to secure proprietary communications and data for release during the 2018 U.S. presidential campaign. Indictment, *United States v. Netyksho*, No. 1:18-cr-00215-ABJ (D.D.C. filed July 13, 2018). “Organization 1”—which, it has been widely reported, is WikiLeaks—is referred to in the indictment as a conduit through which hacked communications were published. *Id.* ¶¶ 47–49; *see also, e.g.*, Matt Zapotosky and Devlin Barrett, *Julian Assange Has Been Charged, Prosecutors Reveal Inadvertently in Court Filings*, Wash. Post, Nov. 15, 2018, <https://perma.cc/9VV2-7LBE>.

6. In addition, in or about April of 2018, both Assange and WikiLeaks were named as defendants in a civil lawsuit by the DNC against Russia, Russian military intelligence, the Trump campaign, and numerous individual defendants, arising out of the same alleged

conspiracy. Complaint and Jury Demand, *Democratic National Comm. v. the Russian Fed'n*, No. 1:18-cv-03501 (S.D.N.Y. filed Apr. 20, 2018).

7. On or about November 15 and November 16, 2018, *The Wall Street Journal*, *The New York Times*, and *The Washington Post* reported that the Justice Department had filed criminal charges against Assange. See Aruna Viswanatha and Ryan Dube, *U.S. Is Optimistic It Will Prosecute Assange*, Wall Street J., Nov. 16, 2018, <https://perma.cc/WTd2-YKRA>; Charlie Savage, et al., *Julian Assange is Secretly Charged in U.S., Prosecutors Mistakenly Reveal*, N.Y. Times, Nov. 16, 2018, <https://perma.cc/K32Q-UWJW>; Zapotosky & Barrett, *supra*. *The New York Times* reported that the prosecution was approved during the summer of 2018 by senior Justice Department officials. Savage et al., *supra*.

8. On or about November 15, 2018, Seamus Hughes, the deputy director of the Program on Extremism at George Washington University, reported that the U.S. Attorney's Office for the Eastern District of Virginia had pasted sections of a motion to seal the charging document in the Assange Prosecution into a publicly available sealing motion filed in an unrelated matter. See @SeamusHughes, Twitter (Nov. 15, 2018, 4:48 PM), <https://perma.cc/Q2UJ-RE3B>. *The Washington Post* reported that the assistant U.S. attorney on that unrelated case, Kellen S. Dwyer, is also assigned to the Assange Prosecution. See Zapotosky & Barrett, *supra*.

9. The government unsealed the motion disclosing the Assange Prosecution in the unrelated matter in September of 2018, and the defendant in that case was indicted last week. *Id.* The portions of that motion disclosing the Assange Prosecution are found in paragraphs three and five. See Government's Motion to Seal Criminal Complaint and Supporting Documents Pursuant to Local Rule 49(b) ¶ 3, *United States v. Seitu Sulayman Kokayi*, No. 1:18-mj-406

(filed Aug. 22, 2018). Paragraph three of that motion states, specifically, that the United States has considered alternatives to sealing, and that any procedure “short of sealing will not adequately protect the needs of law enforcement at this time because, due to the sophistication of the defendant and the publicity surrounding the case, *no other procedure is likely to keep confidential the fact that Assange has been charged.*” *Id.* (emphasis added). Paragraph five of the motion states in pertinent part that the “complaint, supporting affidavit, and arrest warrant, as well as this motion and proposed order would need to remain sealed until *Assange is arrested in connection with the charges in the criminal complaint* and can therefore no longer evade or avoid arrest and extradition in this matter.” *Id.* ¶ 5 (emphasis added).

10. Upon information and belief, the Assange Prosecution, including its case number, is currently sealed in its entirety.

11. Counsel for the Reporters Committee contacted counsel for the government and Assange via e-mail to seek consent for the relief sought by this Application. Counsel for Assange has stated that Assange does not oppose the relief sought by the Reporters Committee. As of the filing of this Application, counsel for the government has not responded. In the event the government opposes the relief sought by this Application, counsel for the Reporters Committee shall meet and confer with counsel for the government, and seek to set a hearing on this Application as soon as practicable.

REQUEST FOR RELIEF

12. The Reporters Committee seeks an order unsealing the court records—including, but not limited to, the Court’s docket and any criminal complaint, indictment, or other charging document—from the government’s criminal prosecution of Assange.

13. The Reporters Committee seeks any further relief that the Court deems just and proper.

Dated: November 16, 2018

Respectfully submitted,

/s Caitlin Vogus

Caitlin Vogus
VA Bar No. 81054
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, DC 20005
Phone: 202.795.9300
Facsimile: 202.795.9310
cvogus@rcfp.org

Katie Townsend*
Gabriel Rottman*
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, DC 20005
Phone: 202.795.9300
Facsimile: 202.795.9310
**Pro Hac Vice Applications Pending*

*Counsel for Applicant the Reporters
Committee for Freedom of the Press*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS TO UNSEAL CRIMINAL PROSECUTION OF JULIAN ASSANGE** was filed with the Clerk of Court using the CM/ECF system, and served on counsel for the following via email and U.S. Mail:

Kellen Dwyer
U.S. Attorney's Office (Alexandria)
2100 Jamieson Avenue
Alexandria, VA 22314
kellen.dwyer@usdoj.gov

Barry J. Pollack
Robbins Russell
2000 K Street, NW
4th Floor
Washington DC 20006
United States of America
bpollack@robbinsrussell.com
Attorney for Interested Party Julian Assange

This the 16th day of November, 2018.

/s Caitlin Vogus
Caitlin Vogus